

1 Plaintiffs, Pro-Se
2 Leland Damner
3 6619 N. Scottsdale Rd.
4 Scottsdale, AZ 85250
5 gotproof@cox.net
6 (602) 410 3417

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 LELAND DAMNER, an individual,

Case No.: **CV20-00911-PHX-CDB**

10 Plaintiff,

COMPLAINT

11 vs.

12 FACEBOOK, INC., a Delaware
13 corporation.

14 Defendant.

15
16 Plaintiff Leland Damner, (hereinafter "Plaintiff"), brings this action on behalf of
17 himself against FACEBOOK, INC., a Delaware corporation. Plaintiff hereby alleges, on
18 information and belief, except as to those allegations which pertain to the named
19 Plaintiff, which allegations are based on personal knowledge, as follows:
20
21

22 **JURISDICTION AND VENUE**

23 1. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
24 §1331. The Court also has supplemental jurisdiction over the state law claims
25 pursuant to 28 U.S.C. § 1367.
26

27 2. This Court has jurisdiction over Defendants because they conduct
28 business in Arizona, both in connection with the facts giving rise to this lawsuit and
29 generally, and have sufficient minimum contacts in Arizona, or otherwise
30

1 intentionally avail themselves of the markets within Arizona, through the promotion,
2 sale, marketing and distribution of their services and products in Arizona, to render
3 the exercise of jurisdiction by this Court proper and necessary.
4

5 3. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2),
6 because a substantial part of the events or omissions giving rise to Plaintiff's claims
7 occurred in this District.
8

9 4. Venue is also proper in this District pursuant to 28 U.S.C. §1391(d)
10 because Defendant Facebook, Inc. resides in this district by virtue of its contacts within
11 this District.
12

13 **THE PARTIES**

14
15 5. Plaintiff is a resident of the city of Maricopa County, Arizona and has
16 maintained a Facebook profile at all relevant times herein.
17

18 6. Defendant FACEBOOK, INC. ("Facebook") is a Delaware corporation
19 with its principal place of business in Menlo Park, California, but does business in
20 Maricopa County, Arizona. Facebook operates a social networking website which allows
21 its users to interact and communicate with other individuals
22

23 **FACTUAL BACKGROUND**

24
25 7. A virtual tsunami of private information of each of Facebook's billions
26 of users is regularly recorded into their unique Facebook profiles and stored by
27 Facebook, including: all manner of biographical information (e.g., current and former
28 names; alternate names; hometown; birthdate; gender; family connections; education;
29 email address; relationship status; education and work history; interests; hobbies;
30

1 religious and political affiliations; phone number; spoken languages); current and
2 former addresses; dates and times of active sessions on Facebook; dates and times and
3 titles of any advertisements that were “clicked” by the Facebook user, connections
4 with other Facebook users; communications with other Facebook users through the
5 integrated Facebook “Messenger” application and the user Facebook inbox; current
6 and last location; attendance at events and social gatherings; stored credit card
7 information used to make purchases on Facebook; people the Facebook user is “friends”
8 with or follows; Facebook groups the user is a member of; a list of IP addresses where
9 the user has logged into and out of his or her account; posts or sites the user has “liked”;
10 searches conducted by the user on Facebook; photographs and videos documenting all
11 aspects of their lives and the lives of their friends and family; and their activity in
12 Facebook-connected applications (“User Information”).
13
14
15
16

17 8. A vital feature of the viral spread of Facebook is the appearance of
18 control users have over their sensitive User Information. Facebook’s privacy settings
19 purport to offer users control over the dissemination of various categories of their User
20 Information, whether it be privately with particular individuals, with all of their
21 Facebook friends, with friends of friends, or with all Facebook users. Users thus
22 reasonably expect User Information will only be accessible to the extent they authorize
23 such access.
24
25
26

27 9. Privacy is very important to Facebook users. Facebook’s CEO, Mark
28 Zuckerberg has publicly acknowledged that people share on Facebook because “they
29 know their privacy is going to be protected.” The security of privacy allows Facebook
30

1 users to feel “engage and share their content and feel free to connect because they
2 know that their privacy is going to be protected.”

3 10. Facebook sets forth its data security policies in a Statement of Rights and
4 Responsibilities and in a separate Data Policy.
5

6 11. The opening line of Facebook’s Statement of Rights and Responsibilities
7 is unambiguous:
8

9 **1. Privacy**

10 Your privacy is very important to us. We designed our Data Policy to
11 make important disclosures about how you can use Facebook to share
12 with others and how we collect and can use your content and information.
13 We encourage you to read the Data Policy, and to use it to help you make
14 informed decisions.
15

16 **2. Sharing Your Content and Information**

17 You own all of the content and information you post on Facebook, and
18 you can control how it is shared through your privacy and application
19 settings. 28
20

21 12. Facebook thus explicitly misleads its users into believing it is their right
22 to control their User Information.
23

24 13. Plaintiff provided his valuable personal data as consideration for use of
25 Facebook. Plaintiff relied on Facebook’s promises to secure his data as stated in the
26 Privacy Policy.
27

28 14. At all relevant times hereto, Facebook collected and stored User
29
30

1 Information from the Plaintiffs, including their biographical information, educational
2 background, work history, birthday, hometown, family and relationship status,
3 interests, religious and political views, history of websites visited, timeline posts,
4 “likes,” current location, online status, and activity in other applications including
5 those controlled and maintained by Facebook.
6

7
8 15. On or about April 20, 2020, Plaintiff’s Facebook account was hacked by an
9 unknown source.
10

11 16. As soon as Plaintiff learned his Facebook account was hacked and
12 compromised, he attempted to contact Facebook to assist him. Specifically, Plaintiff sent
13 a message to Facebook representatives on April 20, 2020, April 24, 2020 and April 29,
14 2020 received no response.
15

16 17. Plaintiff called, texted, emailed and mailed certain executives and
17 employees of Facebook to assist him. They were: Tim Tickel, Shirley Gertkin and
18 Mathias Zillman and called 650 543 4800.
19

20 18. The hacker currently has control over Plaintiff’s Facebook account and is
21 sending messages to other users demanding money. The hacker has changed Plaintiff’s
22 password and other credentials, so Plaintiff is effectively locked out of his account.
23
24

25 19. Facebook will not assist Plaintiff in recovering his account from the hacker
26 or provide Plaintiff any information on how has can recover his account.
27

28 **FIRST CAUSE OF ACTION**

29 **Violation of Stored Communications Act, 18 U.S.C. §§ 2701, et seq.**

30 20. The Stored Communications Act (“SCA”) provides a private right of

1 action against anyone who “(1) intentionally accesses without authorization a facility
 2 through which an electronic communication service is provided; or (2) intentionally
 3 exceeds an authorization to access that facility; and thereby obtains, alters, or prevents
 4 authorized access to a wire or electronic communication while it is in electronic storage
 5 in such system . . .” See 18 U.S.C. §§ 2701(a) and 2707(a).
 6

7
 8 21. Defendant is a “person” within the meaning of the SCA.

9 22. The User Information stored by Facebook and compromised by the hacker
 10 is encompassed within the definition of “electronic storage” under the SCA.
 11

12 **SECOND CAUSE OF ACTION**

13 **Violation of Stored Communications Act, 18 U.S.C. §§ 2702, et seq.**

14
 15 23. Plaintiffs re-allege and incorporate by reference the allegations contained
 16 in the paragraphs above as if fully set forth herein.
 17

18 24. Defendant Facebook is liable under the SCA (18 U.S.C. § 2702(a)) for
 19 unlawfully divulging the contents of Plaintiff’s communications to third parties,
 20 including but not limited to whomever the hacker is sending communications or
 21 information to while logged into Plaintiff’s account. This hacker controls the contents of
 22 Plaintiff’s Facebook account.
 23

24
 25 25. The SCA prohibits a “person or entity providing an electronic
 26 communication service to the public” from “knowingly divulge[ing] to any person or
 27 entity the contents of a communication while in electronic storage by that service.” (18
 28 U.S.C. § 2702(a)).
 29

30 26. Facebook is a “person” within the meaning of the SCA. It provides an

1 “electronic communication service” as that term is defined in the code. The User
2 Information stored by Facebook and compromised by the hacker is encompassed
3 within the definition of “electronic storage” under the SCA.
4

5 27. Accordingly, Plaintiffs request that the Court enter an injunction requiring
6 Facebook to immediately restore Plaintiff’s access to his account and implement and
7 maintain reasonable security procedures to protect customers.
8

9 **THIRD CAUSE OF ACTION**

10 **Intrusion Upon Seclusion**

11
12 28. Plaintiffs re-allege and incorporate by reference the allegations contained
13 in the paragraphs above as if fully set forth herein.
14

15 29. Plaintiff inputted his private User Information onto his individual Facebook
16 profile.
17

18 30. Plaintiff was given a false sense of security in his private User Information
19 by believing they had control over their Facebook profile “privacy settings.” Those
20 settings prompt users to select who can see their posts, their friend requests, their lists of
21 friends, who can locate their profiles using their designated email address and/or phone
22 number, and whether search engines outside of Facebook are permitted to link to their
23 profiles. The categories of individuals who are purportedly given access to the
24
25 aforementioned information are Facebook friends, “friends of [Facebook] friends,” or the
26 public at large.
27
28

29 **FOURTH CAUSE OF ACTION**

30 **Negligence**

1 31. Plaintiff re-alleges and incorporates by reference the allegations contained
2 in the paragraphs above as if fully set forth herein.

3 32. Facebook owed Plaintiff a legal duty to exercise reasonable care in
4 safeguarding and protecting the User Information it collected and maintained of its users.
5 This duty included, among other things, maintaining and testing Facebook's security
6 systems and taking other reasonable security measures to protect and adequately secure
7 the personal data of Plaintiff from unauthorized access and use. Facebook's security
8 system and procedures for handling the personal User Information were intended to affect
9 Plaintiff. Facebook was aware that by taking such sensitive information of users, it had a
10 responsibility to take reasonable security measures to protect the data
11 from being stolen and, in the event of theft, easily accessed.
12

13 33. There is a very close connection between Facebook's failure to take
14 reasonable security standards to protect its users' data and the injury to Plaintiff. If not
15 for Facebook's negligence, the hacker would not have been able to steal Plaintiff's
16 information and use it for their own purposes.
17

18 **FIFTH CAUSE OF ACTION**

19 **Breach of Written Contract**

20 34. Plaintiff re-allege and incorporate by reference the allegations contained
21 in the paragraphs above as if fully set forth herein.

22 35. In order to register as users of Facebook, Plaintiff was required to, and did,
23 affirmatively assent to its Terms and Conditions and Privacy Policy (the "Agreement").
24

25 36. The Agreement's provisions constitute a valid and enforceable contract
26

1 between Plaintiff and Facebook on the other hand.

2 37. Under the Agreement, Plaintiff transmitted sensitive personal information,
3 including personally identifiable information, to Facebook in exchange for use of
4 Facebook and Facebook's promise that it would not share that personal information with
5 third parties, including hackers.
6

7 38. Specifically, the Agreement provides that "You own all of the content
8 and information you post on Facebook, and you can control how it is shared through
9 your privacy and application settings." Facebook breached this provision as alleged
10 herein.
11

12 39. Facebook users effectively pay for Facebook's services through their
13 provision of their sensitive personal information into Facebook's safekeeping.
14

15 40. A material consideration for Plaintiff's transmission of their sensitive
16 personal information to Facebook is Facebook's promise to safeguard their sensitive
17 personal information. As a result of Facebook's misconduct and breach of the Agreement
18 described herein, Plaintiff's suffered damages.
19

20 41. Plaintiff did not receive the benefit of the bargain for which they contracted
21 and for the transmission of their sensitive and unique personal information, which, as
22 alleged above, has ascertainable value to be proven at trial.
23

24 **WHEREFORE**, Plaintiffs is entitled to damages, injunctive relief and equitable
25 relief to remedy the above described misconduct.
26

27 **PRAYER FOR RELIEF**
28

29 **WHEREFORE**, Plaintiffs pray this Court for the following relief:
30

1 A. For an Order declaring Defendants' conduct as detailed above is violative
2 of the law and enjoining Defendants from continuing these acts.

3 B. For a preliminary and permanent injunction ordering Facebook to restore
4 Plaintiff's access to his hacked profile and allow him to retain access moving forward.
5

6 C. For a preliminary and permanent injunction ordering disgorgement by
7 Defendants of all data collected by the hacker within ten (10) days upon request.
8

9 D. For compensatory, damages, and punitive damages in favor of Plaintiffs.

10 E. For costs of this action, including reasonable attorneys' fees and
11 expenses.
12

13 F. For pre-judgment and post-judgment interest at the legal rate; and
14

15 G. For such other and further legal and equitable relief as this Court may deem just
16 and proper.

17 **JURY DEMAND**
18

19 Plaintiffs demand a trial by jury on all issues so triable.

20 Respectfully submitted,
21

22 Certification and Closing

23 Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best
24 of my knowledge, information, and belief that this complaint: (1) is not being presented
25 for an improper purpose, such as to harass, cause unnecessary delay, or needlessly
26 increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous
27
28

1 support after a reasonable opportunity for further investigation or discovery; and (4) the
2 complaint otherwise complies with the requirements of Rule 11.
3
4

5 I agree to provide the Clerk's Office with any changes to my address where case
6 related papers may be served. I understand that my failure to keep a current address on
7 file with the Clerk's Office may result in the dismissal of my case.
8
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10
11 Date of signing: 5/6/2020
12

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15 Signature of Plaintiff, Leland Damner
16

17 
18 Leland Damner
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OUTBACK ADJUSTING AND INVESTIGATIVE SERVICES, LLC

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PI License 1003811 Adj License 110696

May 6th, 2020

FACEBOOK, INC
1 Hacker Way
Menlo Park, CA 94025

RE: Leland Damner v. Facebook, Inc

Dear Facebook:

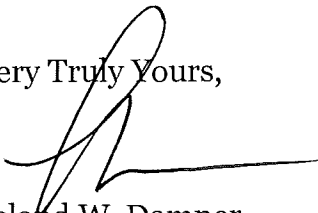
Attached please find a draft complaint. I am hoping this case can be resolved without the necessity to file it with the United States District Court, in the District of Arizona.

I am asking that my original account, with my photo on it, be removed and that my current account, without my picture on it, be removed as well.

Hackers have taken over my original account and have solicited money, posing as me, from my friends. They have been successful twice.

Please respond by Friday, May 8, 2020.

Very Truly Yours,



Leland W. Damner
Plaintiff, Pro-Se
602 410 3417